In the Supreme Court

OF THE

United States

OCTOBER TERM, 1935

No. 859

C. L. ASHTON,

Petitioner,

vs.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT NO. 1,

Respondent.

BRIEF IN BEHALF OF RECLAMATION DISTRICT NO. 1000, NEVADA IRRIGATION DISTRICT AND IRRIGATION DISTRICTS ASSOCIATION OF CALIFORNIA, AS AMICI CURIAE.

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In accordance with permission granted by the Court, the following brief in behalf of Reclamation District No. 1000, Nevada Irrigation District and Irrigation Districts Association of California, as amici curiae, is respectfully submitted.

I.

THE INTEREST OF AMICI CURIAE.

Reclamation District No. 1000 is a reclamation district created by special act of the legislature of the State of California, approved April 8, 1911. (Stats. 1911, page 835.) It is a public corporation or agency of the State of California.

9 *California Jurisprudence*, page 856;
Morrison v. Smith, 211 Cal. 36, at page 40.

In Section 2 of the Act creating the reclamation district, it is provided that the district "shall have all of the rights and powers which are now or may hereafter be conferred by the provisions of the Political Code, or by other laws of the state, upon reclamation or swamp land districts, * * *". Sections 3446 to 3493½, inclusive, of the Political Code of the State of California are the controlling laws of the State pursuant to which reclamation districts function. Section 3480 of said Code empowers reclamation districts to create bonded debts and Section 3480a thereof empowers said districts to issue refunding bonds.

So created and empowered, Reclamation District No. 1000 has heretofore authorized and put out two original bond issues pursuant to Section 3480 and two refunding issues pursuant to Section 3480a. Bonds of the original issues, as authorized and issued were dated and in amounts, as follows:

Issue	Date of	Amount
Original First	January 1, 1913	$1,997,344.40
Original Second	July 1, 1917	1,000,000.00
Total original bonds authorized and issued		$2,997,344.40.

The proceeds derived from the sale of these bonds was devoted to reclaiming approximately 55,000 acres of swamp and overflowed lands across the American River from the City of Sacramento and extending northerly along the easterly bank of the Sacramento River, from the junction of the American River with the Sacramento River, a distance of about twenty miles. The works of reclamation constructed with the proceeds of the sale of the bonds consisted of a levee system surrounding the entire district, an internal drainage system and two large pumping plants. The works are complete and the entire acreage within the district is fully reclaimed and is intensively cultivated.

Refunding bonds, as authorized, were dated and in amounts, as follows:

Issue	Date of	Amount
First Refunding	January 1, 1924	$1,697,344.40
Second Refunding	January 1, 1927	1,000,000.00
Total refunding bonds authorized		$2,697,344.40,

of which amount refunding bonds were issued as follows:

Issue	Date of	Amount
First Refunding	January 1, 1924	$ 700,000.00
Second Refunding	January 1, 1927	300,000.00
Total refunding bonds issued		$1,000,000.00.

The proceeds of the sale of refunding bonds was used solely to retire maturing original bonds. Through assessment calls made against the landowners, and by bonds acquired by landowners and turned in as payments on account of bond assessments pursuant to an amendment to Section 3480 of the Political Code made in 1923 (Stats. 1923, page 598 at 608), the bonded debt of the district had been reduced as of May 7, 1934 (being the date of a refinancing loan granted the district by Reconstruction Finance Corporation), to a total sum of $2,268,344.40, as follows:

Original First Issue	$ 760,344.40
Original Second Issue	566,000.00
First Refunding Issue	655,000.00
Second Refunding Issue	287,000.00
Total	$2,268,344.40.

The bonds were secured by benefit assessments against the lands within the district. From the date of the original issue to the year 1930, assessment calls to service the bonds were met with substantially no defaults. However, with the coming of the depression and the collapse of agricultural commodity prices, the delinquencies multiplied until finally there was practically a complete failure of the landowners to meet the calls to service January 1, 1934 maturi-

ties of principal and interest. In the face of this failure, the district had no alternative than to default under its four bond issues. The depression, responsible for this default, being world-wide, created a national emergency resulting in the enactment by Congress of the "Emergency Farm Mortgage Act of 1933", 48 Stats. 49; Public–No. 10–73rd Congress, Part 4, Section 36 et seq. Reclamation District No. 1000, with default at January 1, 1934 inevitable, under authority of the Act last cited, filed an application with Reconstruction Finance Corporation for a loan to refinance its bonded debt in December, 1934. In response to this application, Reconstruction Finance Corporation granted the district a loan on May 7, 1934, in the sum of $1,609,000.00, or at the rate of about $700.00 for each $1000.00, face value, of bonds outstanding. Out of the proceeds of this loan, there has now been acquired all but $50,300.00 of the $2,-268,344.40 of outstanding bonds of the district as set out above. Of the bonds not deposited under the refinancing plan, $16,300.00 are held by unknown owners who have not presented coupons for several years and the remainder of $34,000.00 are held by two owners, both of whom have refused to deposit and have declared that they will not do so unless and until this Court shall have upheld as constitutional, Chapter IX of "An Act to establish a uniform system of bankruptcy throughout the United States", said Chapter having been enacted May 24, 1934.

U. S. C. A., Title 11, 1935 Pocket Sup., page 200, Section 303;

Public–251–73rd Congress.

The question presented to this Court in the above entitled action is the constitutionality of said Chapter IX and, as will appear from the facts hereinabove recited, Reclamation District No. 1000 has a real and substantial interest in that question.

Nevada Irrigation District is similarly interested in the question now before the Court. This district is one organized under the provisions of the "California Irrigation District Act". (Stats. 1897, page 254, as amended; Deering's General Laws of California, 1931 ed., Act 3854, page 1948.) It has heretofore issued and now has outstanding bonds dated and in principal amounts, as follows:

Issue	Date of	Amount
Original First Issue, First Division	July 1, 1925	$ 14,000.00
Original First Issue, Second Division	July 1, 1926	16,000.00
Refunding Issue	September 15, 1931	8,070,000.00
	Total	$8,100,000.00.

The validity of these issues, and of the Sections of the Act under which authorized, have been upheld by decisions of the Supreme Court of the State of California.

Mulcahy v. Baldwin, 216 Cal. 517, decided October 14, 1932;

Meyerfeld v. South San Joaquin Irrigation District, 3 Cal. (2d) 409, decided April 30, 1935.

Recently the Reconstruction Finance Corporation has granted this district a loan for the purpose of refunding its bonded debt, the amount of the grant being based upon the ability of the landowners within the district to pay, as found by the Reconstruction Finance Corporation after extended investigations and hearings. The loan granted is in the sum of $4,050,000.00 or fifty cents on the dollar of outstanding bonds. Here again, an agricultural depression of unprecedented severity has made it impossible for the landowners within the district to meet the assessments necessary to service the bonds. The entire project is confronted with financial collapse unless refinancing can be consummated within the terms of the Reconstruction Finance Corporation grant. The district embraces an area of 266,000 acres and has a rural and urban population within its boundaries, or dependent upon its stability, of upwards of 20,000.

There is no doubt that an overwhelming majority of the outstanding bonds of this district will be deposited under the refinancing plan promptly. It is also known that a small percentage of these bonds will not be deposited unless Chapter IX (Secs. 78 to 80) of the Bankruptcy Act may be invoked to compel acceptance of a reasonable plan of debt readjustment. Therefore, this district is also vitally and immediately concerned with upholding the constitutionality of Chapter IX.

The Irrigation Districts Association of California is an association organized and existing for the pur-

pose of serving generally irrigation, reclamation, drainage and similar districts created, organized and existing under the laws of the State of California and devoted to the reclamation of agricultural lands by providing waters for the irrigation thereof and building works for preventing the overflow, or for the drainage, thereof. This association has an active membership of ninety-eight such districts, embracing upwards of four million acres of rich agricultural lands extending throughout the state. These districts have a combined bonded indebtedness of about $100,000,000.00, all eligible to seek refinancing under the provisions of the Emergency Farm Mortgage Act of 1933, hereinabove cited. Applications by various of these districts for loans under said Act have been granted for many millions of dollars and other applications are still pending. In every instance where loans have been granted, a substantial majority of the holders of the outstanding bonds have promptly accepted the refinancing plans and deposited their bonds, but in every case, an inconsequential minority have persisted in withholding acceptance and deposit. Experience has demonstrated that only through according to these districts the right to proceed pursuant to Chapter IX of the National Bankruptcy Act, Sections 78 to 80 thereof, may these districts secure the benefits sought to be accorded such districts by the Congress in enacting the said Emergency Farm Mortgage Act of 1933.

II.

ARGUMENT.

A. CHAPTER IX OF THE BANKRUPTCY ACT (SECTIONS 78 TO 80 THEREOF) SHOULD BE UPHELD AS CONSTITUTIONAL.

Two recent decisions of this Court have considered and passed upon the constitutionality of provisions of the Bankruptcy Act, to-wit:

Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 55 S. Ct. 547, 79 L. Ed. 1593, 97 A. L. R. 1106, decided May 27, 1935;

Continental Illinois National Bank & Trust Company of Chicago v. Chicago, Rock Island & Pacific Railway Company, et al., 294 U. S. 648, 55 S. Ct. 213, 79 L. Ed. 1110, decided April 1, 1934.

In the first of these cases, Section 75, Subdivision (s) of the Bankruptcy Act was held to be unconstitutional as violative of the Fifth Amendment in that it deprived the Land Bank of its property without due process of law. In the second case, Section 77 of the Bankruptcy Act, relating to the reorganization of a corporation unable to meet its debts as they mature, was upheld as valid legislation.

It is respectfully submitted that a comparison of Sections 75 (s) and Section 77 with Sections 78 and following of the Emergency Farm Mortgage Act of 1933, discloses that the decision in the *Radford* case holding 75 (s) as unconstitutional has no applicability to the provisions of the Emergency Farm Mortgage Act of 1933, whereas the holding of the Court in the

Rock Island case, declaring Section 77 to be constitutional, is directly in point to the analogous procedure provided in Sections 78, 79 and 80 of the Bankruptcy Act.

B. COMPARISON OF SECTIONS 75 (s) AND 78-80 OF THE BANKRUPTCY ACT.

The Frazier-Lempke Act (Sec. 75 (s)), being Chapter VIII of the Bankruptcy Act, as enacted, was unlimited as to time and it was not enacted as an emergency measure. It, therefore, was clearly distinguished by the Court from the decision in the mortgage moratorium case. (*Home, etc., Co. v. Blaisdell,* 78 L. Ed. 413.) But Chapter IX was properly enacted as an emergency measure (see Sec. 78) and by Section 79, the bankruptcy jurisdiction accorded by the section is limited to two years only. In Section 75 (s), Congress sought, not as an emergency measure and for a limited period, to impair the substantive rights of the bank. But in Chapter IX, Congress has expressly declared an emergency to exist, adopts legislation for the purpose of meeting the emergency in the public interest, and then restricts the operation of the emergency legislation to a period of two years. It is truly a bankruptcy measure.

The Frazier-Lempke Act contained no provision requiring the concurrence in the refinancing plan of a majority, or any other percentage of the creditors. In effect, it practically permitted the debtor to rewrite his obligations, restricted only by the amount of the

appraisement, or reappraisement, contemplated by the Act. No such arbitrary provision is contained within Chapter IX. As the Act read at the time the pending case arose, the acceptance in writing of 66⅔% in amount of the claims of each class of the creditors of the taxing district affected by the plan is a prerequisite to confirmation. In the case of Section 75 (s), there is in no sense a composition, as contemplated by Section 74, Subdivision (e) of the Bankruptcy Act, but instead, as shown above, an arbitrary taking over of property rights of the creditors for the exclusive benefit of the debtor. The Fifth Amendment was clearly violated.

It thus appears that a very marked difference lies between the so-called Frazier-Lempke Act and Chapter IX. To summarize, the former was without time limit; the latter is restricted to two years. Under the former, the Court may enforce the adjustment against the will of every creditor. Clearly due process is violated. But under the latter, acquiescence of two-thirds of the creditors was, at the time the case arose, essential to a decree, thus fully conforming with the theory of Section 74 (e) of the Bankruptcy Act governing compositions, and Section 74 (e) has stood the test of constitutionality under the Act of 1874 as well as the present Bankruptcy Act of July 1, 1898.

7 *Corpus Juris* 341, et seq.;

Cumberland Glass Manufacturing Co. v. DeWitt, 237 U. S. 447, 59 L. Ed. 1042 at 1045.

C. COMPARISON OF SECTIONS 77 AND 78-80.

Section 77 of the Bankruptcy Act is analogous to the provisions of Chapter IX. In theory, it differs only in that under Section 77, providing for the reorganization of railroads, the plan must be submitted to the Interstate Commerce Commission which, following a hearing, shall render a report as to whether the plan is equitable, fair to creditors, financially advisable, and in the public interest. (Sub. d.) In Subdivision (e), it is provided that the commission shall not have authority to finally approve the plan:

> "* * * until it has been accepted in writing and such acceptance has been filed in the proceeding by or on behalf of creditors holding two-thirds in amount of the claims of each class whose claims or interest would be affected by the plan, and by or on behalf of stockholders of the debtor holding two-thirds of the stock of each class."
>
> U. S. C. A., Title 11, Section 205, Subdivision (e).

In comparison with this requirement, the attention of the Court is directed to the marked similarity of Subdivision (d) of Chapter IX. It reads:

> "(d) The plan of readjustment shall not be confirmed until it has been accepted in writing, filed in the proceeding, by or on behalf of creditors whose claims have been allowed holding two-thirds in amount of the claims of each class whose claims have been allowed and would be affected by the plan, and by creditors holding 66⅔ per centum * * * in amount of the claims of all classes of the taxing district affected by the plan, * * * and

such plan has been accepted and approved by the taxing district in writing filed in the proceeding, signed in its name by an authorized authority: * * *."

U. S. C. A., Title 11, Section 303, Subdivision (d).

In upholding the constitutionality of Section 77 of the National Bankruptcy Act, this Court said in

Continental Illinois National Bank and Trust Company v. Chicago, Rock Island & Pacific Railway Company, et al., 294 U. S. 648, 79 L. Ed. 1110, at page 1123,

in part, as follows:

"Article I, Sec. 8, cl. 4, of the Federal Constitution vests Congress with the power to 'establish * * * uniform laws on the subject of bankruptcies throughout the United States'; and the simple question is—does Sec. 77 constitute a law on the subject of bankruptcies? * * * By the act of 1867, as amended by the act of (January 22) 1874, chap. 390, Sec. 17, 18 Stat. at L. 178, 182, the debtor for the first time was permitted, either before or after an adjudication in bankruptcy, to propose terms of composition to his creditors to become binding upon their acceptance by a designated majority and confirmation by the judge. The fundamental and radically progressive nature of these extensions becomes apparent upon their mere statement; but all have been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution. Taken altogether, they demonstrate in a very striking way the capacity of the bankruptcy

clause to meet new conditions as they have been disclosed as a result of the tremendous growth of business and development of human activities from 1800 to the present day. And these acts, far-reaching though they may be, have not gone beyond the limit of congressional power; but rather have constituted extensions into a field whose boundaries may not yet be fully revealed. * * * Obviously, Sec. 77 does no more than follow the line of historical and progressive development projected by previous acts. As outlined by that section, a plan of reorganization, when confirmed, cannot be distinguished in principle from the composition with creditors authorized by the act of 1867, as amended by the act of 1874. It is not necessary to the validity of either that the proceeding should result in an adjudication of bankruptcy. The constitutionality of the old provision for a composition is not open to doubt."

Continuing, and in part quoting from the decision of this Court in the case of

Canada and Southwestern Railroad Company v. Gebhard, 109 U. S. 527, 27 L. Ed. 1020, at 1027,

the Court, at 79 L. Ed. page 1127, held:

"The scheme when confirmed by the court became binding upon the non-assenting minority and this court held it to be thus binding upon bondholders who were citizens of the United States and who sued in courts of the United States to recover on their bonds. The 'scheme' of the Canadian law was not unlike the 'plan' of Sec. 77. The significant part of the court's opinion, so far as the question now under discussion

is concerned, is the following, which appears at p. 536: 'The confirmation and legalization of "a scheme of arrangement" under such circumstances is no more than is done in bankruptcy when a "composition" agreement with the bankrupt debtor, if assented to by the required majority of creditors, is made binding on the non-assenting minority. In no just sense do such governmental regulations deprive a person of his property without due process of law. They simply require each individual to so conduct himself for the general good as not unnecessarily to injure another. Bankrupt laws have been in force in England for more than three centuries, and they had their origin in the Roman law. The Constitution expressly empowers the Congress of the United States to establish such laws. Every member of a political community must necessarily part with some of the rights which, as an individual, not affected by his relation to others, he might have retained. Such concessions make up the consideration he gives for the obligation of the body politic to protect him in life, liberty, and property. Bankrupt laws, whatever may be the form they assume, are of that character.' * * * It is in entire harmony with the spirit of bankrupt laws, the binding force of which, upon those who are subject to the jurisdiction, is recognized by all civilized nations. It is not in conflict with the Constitution of the United States, which, although prohibiting States from passing laws impairing the obligation of contract, allows Congress 'to establish * * * uniform laws on the subject of bankruptcy throughout the United States'. Unless all parties in interest, wherever they reside, can be bound by the arrangement

which it is sought to have legalized the scheme may fail. It is unnecessary to consider the criticism, sometimes made, that these excerpts are dicta merely, since we are of opinion that they are sound in principle. It follows, from what has now been said, that Sec. 77, in its general scope and aim, is within the power conferred by the bankruptcy clause of the Constitution; and we so hold." (79 Law ed. 1127.)

III.

RECLAMATION, IRRIGATION AND SIMILAR DISTRICTS ORGANIZED UNDER THE LAWS OF THE STATE OF CALIFORNIA ARE EMPOWERED BY LAW TO INVOKE THE PROVISIONS OF CHAPTER IX.

The question may be raised as to whether or not state agencies, such as are here involved, have authority to invoke said Chapter IX. Being creatures of the statute, admittedly such districts may only undertake those things for which the statute accords express authority, or which are necessarily implied from the express grants. It so happens that the Legislature of the State of California has made ample provision empowering these districts to invoke the benefits of said Chapter IX. Chapter 4 of the statutes of the State of California, enacted at a special session of the Legislature which convened September 12, 1934, meets the question squarely and accords plenary authority in the premises to all such districts.

California Stats. 1934 (Extra Session), page 4.

IV.

CONCLUSION.

It is respectfully submitted that Chapter IX is so drafted as to avoid the constitutional objections properly interposed to Chapter VIII in the *Radford* case; that it meets all of the requirements of the Fifth Amendment, neither contravening said Amendment nor any other provision of the Federal Constitution or any of the amendments thereto; that it is emergency legislation properly enacted to meet a serious crisis in the economic life of the nation, and that an early decision is urgently required to the end that all parties, creditors as well as debtors of the districts, may proceed to stabilize a pending chaotic condition.

Dated, Sacramento, California,
April 22, 1936.

Respectfully submitted,
C. F. METTEER,
Attorney for Reclamation District No. 1000, Nevada Irrigation District and Irrigation Districts Association of California, as Amici Curiae.